

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER JEROME BOYD,

Defendant-Appellant.

UNPUBLISHED

September 29, 2011

No. 298769

Oakland Circuit Court

LC No. 2009-228798-FC

Before: M.J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

Defendant appeals of right from his conviction following a jury trial of interfering with an electronic communication in violation of MCL 750.540(4).¹ Defendant was sentenced to one year of probation and 215 days in jail, with 215 days jail credit. For the reasons set forth in this opinion, we affirm the conviction and sentence of defendant.

Defendant and his wife went to a hotel to discuss issues involving their marriage. The two were separated at the time, and defendant's wife, the victim in this case, had traveled from Canada with the couple's son. According to defendant, he had suggested that the two meet at the Red Roof Inn in Madison Heights to talk about their marriage. While there, the two argued and according to the victim, as she attempted to leave, defendant blocked her exit. When the victim's cell phone rang, defendant grabbed the victim and the two struggled over the cell phone. According to the victim, defendant began punching her and dragged her across the room by her hair. As she tried to retreat into the bathroom to call the police, defendant took her cell phone from her hand. After the defendant ordered the victim to remove her clothes, she testified that she attempted to use the hotel phone but defendant pulled the phone cord out of the wall. In his brief on appeal, defendant concedes that he admitted to pulling the landline from the wall.

On appeal, defendant argues that his conviction should be reversed based on his claim that MCL 750.540(4) is unconstitutionally vague. A statute is presumed constitutional, *People v*

¹ Defendant was found not guilty of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(f) (force or coercion causing personal injury), and criminal sexual conduct in the third degree (CSC 3), 750.520d(1)(b) (force or coercion).

Malone, 287 Mich App 648, 658; 792 NW2d 7 (2010), and the party challenging the statute has the burden to prove its invalidity, *People v Thomas*, 201 Mich App 111, 117; 505 NW2d 873 (1993). A criminal statute is unconstitutionally vague if “it does not provide fair notice of the conduct proscribed” or “it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed,” or it impinges on First Amendment freedoms. *People v Vronko*, 228 Mich App 649, 652; 579 NW2d 138 (1998). We review de novo constitutional challenges, *People v McCuller*, 479 Mich 672, 681; 739 NW2d 563 (2007), and questions of statutory interpretation, *People v Anstey*, 476 Mich 436, 442; 719 NW2d 579 (2006). The proper inquiry is whether “the statute is vague as applied to the conduct allegedly proscribed in this case.” *Vronko*, 228 Mich App at 652. We find that the statute at issue is not vague as applied to defendant’s admitted conduct in this case.

MCL 750.540(4) provides as follows:

A person shall not willfully and maliciously prevent, obstruct, or delay by any means the sending, conveyance, or delivery of any authorized communication, by or through any telegraph or telephone line, cable, wire, or any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network.

“The ‘void for vagueness’ doctrine is derived from the constitutional guarantee that a state may not deprive a person of life, liberty or property without due process of law.” *State Treasurer v Wilson (On Remand)*, 150 Mich App 78, 80; 388 NW2d 312 (1986), citing US Const, Am XIV; Const 1963, art 1, § 17. In *People v Hrlic*, 277 Mich App 260, 263; 744 NW2d 221 (2007), this Court delineated the rules applicable to a statute challenged as unconstitutionally vague and explained as follows:

A statute may be unconstitutionally vague on any of three grounds: (1) it is overbroad, impinging on First Amendment freedoms, (2) it fails to provide fair notice of the conduct proscribed, or (3) it is so indefinite that it confers unlimited and unstructured discretion on the trier of fact to determine whether an offense has occurred. [*People v Hill*, 269 Mich App 505, 524; 715 NW2d 301 (2006)]; *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004). To evaluate a vagueness challenge, this Court must examine the entire text of the statute and give the words of the statute their ordinary meanings. *Hill*, *supra* at 524; *Sands*, *supra* at 161. “To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Id.* A term that requires persons of ordinary intelligence to speculate about its meaning and differ on its application may not be used. *Id.* To be sufficiently definite, the meaning of a term must be “fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words.” *Id.* at 161; *Hill*, *supra* at 524. Vagueness challenges must be considered in light of the facts at issue. *Sands*, *supra* at 161.

Defendant argues that MCL 750.540(4) is unconstitutionally vague for two reasons: (1) because it fails to provide fair notice of the prohibited activity, and (2) because it lends itself to

arbitrary enforcement. In support of his argument, defendant argues to this Court that the words “by any means” are not sufficiently clear to afford proper notice of the conduct proscribed by the statute. Defendant asserts that “by any means” necessarily encompasses everything a person might do that interferes with someone else’s telephone call, positing hypothetical’s that he asserts could be seen as prohibited. However, “[a] defendant may not challenge a statute as unconstitutionally vague when the defendant’s own conduct is fairly within the constitutional scope of the statute. The fact that a hypothetical may be posed that would cast doubt upon the statute does not render it unconstitutionally vague.” *People v Malone*, 287 Mich App 648, 658-659; 792 NW2d 7 (2010). In this case, defendant’s conduct clearly falls within the scope of the MCL 750.540(4).

Moreover, although in abstract the phrase “by any means” is broad, it is limited by the bookending language “shall not willfully and maliciously prevent, obstruct, or delay” and “any authorized communication.” See *Hill*, 269 Mich App at 524 (observing that when “evaluat[ing] a vagueness challenge, this Court must examine the entire text of the statute”). The United States Supreme Court “has made clear that scienter requirements alleviate vagueness concerns.” *Gonzales v Carhart*, 550 US 124, 149; 127 S Ct 1610; 167 L Ed 2d 480 (2007). The scienter requirements in § 540(1)—“willfully” and “maliciously”—set forth a relatively clear guideline of the prohibited conduct. “Maliciously” and “willfully” are terms that “have acquired a peculiar and appropriate meaning in the law,” and thus must be “understood according to [that] meaning.” MCL 8.3a.² This mens rea requirement also prevents arbitrary enforcement of the statute.

In this case, defendant admitted that he ripped the telephone cord from the wall, and the testimony of the victim was that defendant took her cell phone thereby prohibiting her from making any telephone calls. Thus by his own testimony, defendant admitted that he willfully and maliciously prevented, obstructed, and delayed the victim’s call, by ripping the telephone cord from the wall and also by physically preventing her from retrieving her cellular telephone. Thus, by virtue of his actions, defendant interfered with “the sending, conveyance or delivery” of a telephone communication. Accordingly, defendant’s constitutional challenge is without merit.

Affirmed.

/s/ Michael J. Kelly
/s/ Donald S. Owens
/s/ Stephen L. Borrello

² “Malicious” is defined as “[s]ubstantially certain to cause injury” or “[w]ithout just cause or excuse.” Black’s Law Dictionary (7th ed). “Willful” is defined as “[v]oluntary and intentional, but not necessarily malicious.” Black’s Law Dictionary (7th ed).